

Astro Printing Services, Inc. and Graphic Communications International Union, Local 14. Case 4-CA-17899

December 28, 1990

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On November 7, 1989, Administrative Law Judge Joel A. Harmatz issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a brief in support of cross-exceptions and in answer to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions, as modified, and to adopt the recommended Order as modified.

The Respondent has excepted, inter alia, to the judge's conclusion that the Respondent's unfair labor practices warrant the issuance of a remedial bargaining order pursuant to the principles of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). For the reasons set forth in the judge's decision, as further explained and clarified below, we agree that a bargaining order is necessary here.

The relevant facts are fully described in the judge's decision. Aggrieved by changes in benefits and working conditions made by the Respondent in November and December 1988, employees initiated contact with representatives of the Union in January 1989.² On Jan-

¹The Respondent asserts that the judge's resolution of credibility, findings of fact, and conclusions of law are the results of bias. After a careful examination of the entire record we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the *Supreme Court* stated in *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In response to the exceptions and cross-exceptions, we note the following nondeterminative factual misstatements by the judge: the sec. III,B reference of employee attempts to repudiate their support for the Union by letter should be to "GCX 6," as correctly indicated in fn. 18, not "GCX 5"; the reference in the second sentence of fn. 19 to "Roberts" should read "Ravert"; and, in the penultimate sentence of fn. 27, "March 13" should be "February 13." Further, the record does not support the judge's statement that employee Metzgar testified she could not recall whether employee Owens had told her that the only purpose for which the card would be used was to have a vote. The record likewise does not support the judge's finding that Owens testified he told Metzgar that there would be no obligation for anyone to pay an initiation fee irrespective of the election outcome.

²All dates are in 1989, unless otherwise indicated.

uary 30, the Union filed a representation election petition with the Board and gave the Respondent a letter demanding recognition on the basis of authorization cards signed by five of the eight employees in an appropriate bargaining unit of production and maintenance employees.³ Later that day, the Respondent's president and co-owner, Alfred Roberts, violated Section 8(a)(1) by asking employees if they knew anything about the Union's request for recognition and if they had attended any union meetings.⁴

On February 6, the Respondent's secretary-treasurer and co-owner, James Cousin, attended a meeting requested by employees who had signed authorization cards. Cousin began the meeting by asking them to recite their grievances. The employees voiced their complaints. At the close of the meeting, Cousin asked the employees to list their problems in writing. Subsequently, the employees reviewed such a list in discussions with the Respondent's accountant, who acted on behalf of the Respondent's co-owners. These discussions were premised on the concept that the employees would withdraw support for the Union's election petition if their demands were satisfied.

On February 13, Roberts and Cousin signed a "Proposed Company Policy in Writing" which promised: a 6-percent pay raise on March 1; annual cost-of-living increases; merit increases pursuant to an annual review; increased health and sick leave benefits, vacation, paid holidays, paid personal days; the payment of accumulated vacation pay on termination; and 30 days' notice from the Respondent prior to any future changes in policies. On receiving the Respondent's benefit schedule, those employees who had signed authorization cards wrote the Union a letter requesting cancellation of the union petition because of "Increased Wages, Restored Medical & Hospitalization, Plus other increased Benefits by Company." The judge found, and we agree, that the Respondent's conduct described above constituted solicitation of grievances with the implication of favorable resolution, followed by promises of benefits to dissuade employees from supporting the Union, all in violation of Section 8(a)(1).

There is no indication that the Respondent ever implemented any of its promised benefit changes. On February 15, the Union filed a charge initiating this unfair labor practice proceeding. A month later, the Respondent's attorney, Robert Landes, violated Section 8(a)(1) by asking the three card signers remaining in the work force⁵ whether they had given affidavits to

³In finding that employees signed single purpose union authorization cards, Member Cracraft does not rely on *Nissan Research & Development*, 296 NLRB 598 (1989).

⁴In adopting the judge's conclusion that Roberts unlawfully interrogated employees on January 30, 1989, we do not rely on evidence that he subsequently altered his behavior toward the employees from unusually sociable to cold and noncommunicative. Member Cracraft also does not rely on *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

⁵Two of the original card signers had voluntarily terminated their jobs by this date. Another left by June 15.

the Board and by stating that “it would be helpful to the company if someone wanted to give the owners a copy.” Landes repeated this unlawful conduct in conversation with an individual employee in late March.⁶

It is clear that after receiving the Union’s demand for recognition and bargaining, the Respondent immediately took action designed to identify the employees who supported the Union, to solicit the grievances underlying their desire for representation, and to impress on the employees that their demands could best be fulfilled through direct dealing with the Respondent and that union representation would not afford them any advantages. Although the Respondent did not commit any “hallmark” violations (such as threats of plant closure, threats of discharge, or actual discriminatory discharge), the unfair labor practices were serious in nature, commenced on the day the Union demanded recognition, involved the Respondent’s co-owners, and affected the entire small bargaining unit. The Respondent’s failure to grant the benefits promised in its “Proposed Company Policy in Writing” did not minimize the impact of its unlawful conduct. It is more likely that this failure would reinforce the lingering effects of the Respondent’s unlawful conduct by giving employees the impression that as long as the Union’s shadow remained, cast by the pending unfair labor practice charge, the employees would not be able to secure the benefits which the Respondent had stated they could get without the Union.

This case is similar to *Teledyne Dental Products Corp.*, 210 NLRB 435 (1974).⁷ The Board there found that the respondent reacted to a union’s request for recognition by unlawfully soliciting grievances, promising to grant benefits based on a list of solicited employee demands, and subsequently granting one minor benefit. In concluding that a bargaining order was necessary to remedy these unfair labor practices, the Board stated at 435–436:

⁶In accord with the General Counsel’s cross-exceptions, we find that questioning by Landes on March 15 and again in late March about whether employees had given statements to the Board violated Sec. 8(a)(1) independently of his unlawful requests that the employees provide the Respondent’s owners with copies of any such statements. *GEX of Colorado*, 250 NLRB 593, 596 (1980); *Johnnie’s Poultry Co.*, 146 NLRB 770 (1964). We shall modify the judge’s recommended Order and substitute a new notice reflecting these separate 8(a)(1) findings.

We find it unnecessary to pass on whether the Respondent’s co-owner, Cousin, violated Sec. 8(a)(1) by questioning former employee Ravert on June 15. Any finding of a violation based on this incident would be cumulative.

⁷Contrary to the Respondent, we find that *NLRB v. K & K Gourmet Meats*, 640 F.2d 460 (3d Cir. 1981), is distinguishable from the present case. A panel majority there denied enforcement of the Board’s *Gissel* bargaining order based on reversal of three of the Board’s five unfair labor practice findings and on the view that any effects of the remaining unfair labor practices (promises of benefits) were minimal in light of evidence that employees did not believe the promises made and instead voted to strike. In this case, we have found that the Respondent engaged in unlawful interrogation and solicitation of grievances before making promises of benefits which employees not only believed but relied on in repudiating their support for the Union. Moreover, these unfair labor practices were followed by unlawful attempts to secure information about the Board’s efforts to investigate them.

Obviously such conduct must, of necessity, have a strong coercive effect on the employees’ freedom of choice, serving as it does to eliminate, by unlawful means and tactics, the very reason for a union’s existence. We can conceive of no more pernicious conduct than that which is calculated to undermine the Union and dissipate its majority while refusing to bargain. Neither is there any conduct which could constitute a greater impairment of employees’ basic Section 7 rights under our Act, especially since such conduct by its very nature has a long-lasting, if not permanent, effect on the employees’ freedom of choice in selecting or rejecting a bargaining representative.

We find no merit in the Respondent’s argument that it has effectively remedied the long-lasting effects of its “pernicious conduct” by memoranda given to employees on March 15 and April 17, 1989. Although these documents contained assurances of employees’ rights to engage in union activities and disavowals of any misconduct, we find that they were not sufficient to negate the need for a remedial bargaining order. Most importantly, these efforts at mitigation were too late to have any meaning. The Respondent’s unlawful interrogations, solicitation of grievances, and promises of benefits had already resulted in the employees’ complete repudiation of the Union. Further, the Respondent never made any unequivocal admission of unlawful conduct in its memoranda. On the contrary, the March 15 memorandum directly contradicted the preponderance of evidence in this case by disclaiming any intent to influence or persuade employees to withdraw support from the Union and by expressing the belief that the Respondent had not acted improperly. The April 17 memorandum similarly stated that the Respondent never intended to violate the Act. Finally, the March 15 document was distributed to employees by the Respondent’s attorney Landes during the same meeting in which he unlawfully interrogated employees about whether they had given affidavits to the Board and asked for copies of any affidavits. The facsimile Board remedial notice to employees, which was attached to the April 17 memorandum, contains no reference to these unfair labor practices.

We also find no merit in the Respondent’s contention that the imposition of a bargaining order is unwarranted in light of the fact that four unit employees, including three who had signed union authorization cards, are no longer employed by the Respondent. Such evidence is irrelevant under existing Board law concerning factors governing the issuance of *Gissel* bargaining orders.⁸ Even assuming the relevance of employee turnover, we find that the evidence in this case would not warrant a finding that turnover has dis-

⁸*F & R Meat Co.*, 296 NLRB 759 (1989); *Highland Plastics*, 256 NLRB 146, 147 (1981).

sipated the lingering effects of the unfair labor practices to the extent that a fair election could be held. In light of the serious nature of those unfair labor practices, the small size of the unit, the continuing presence of the other unit employees who had been promised benefits, the indelible message that those benefits could be secured only in the Union's absence, and the continuing presence of the Respondent's co-owners who conveyed that message through their unlawful promises, we find that the present deleterious effects of the Respondent's misconduct remain essentially the same as when it occurred.

Based on the foregoing, we agree with the judge that the possibility of erasing the effects of the Respondent's unfair labor practices and of conducting a fair election by the use of traditional remedies is slight. On balance, the unit employees' representation desires as once expressed through authorization cards would be better protected by the issuance of a bargaining order. Accordingly, we adopt the judge's finding that the Respondent has violated Section 8(a)(5) on and after January 30, 1989, by refusing to recognize and to bargain with the Union as the exclusive representative of the Respondent's employees in an appropriate unit.⁹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Astro Printing Services, Inc., Warminster, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(d).

“(d) Interrogating employees about whether they had submitted affidavits to agents of the National Labor Relations Board, and requesting that employees turn over copies of any affidavits that they had submitted to the National Labor Relations Board.”

2. Substitute the attached notice for that of the administrative law judge.

⁹However, in issuing the *Gissel* bargaining order, we find it unnecessary in this case to rely on the judge's broad statements that (1) “in terms of redress, the comprehensive promise of benefits is less susceptible to correction [than discriminatory discharges]”; (2) “it is fair to state that conventional Board remedies are overmatched by this form of industrial bribery”; and (3) “this line of cases headed by *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), are inapposite to the issue of whether the special relief available under *Gissel* is warranted.” Rather, we find on the particular facts of this case that a bargaining order is warranted in this case.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT solicit your grievances under conditions implying that we will resolve them in your favor.

WE WILL NOT promise you benefits to induce you to withdraw your support of the Union, or any other labor organization.

WE WILL NOT interrogate you about whether you have submitted affidavits to agents of the National Labor Relations Board, and WE WILL NOT request that you give us copies of any affidavits that you have submitted to the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following collective-bargaining unit:

All production and maintenance employees employed at the Warminster, Pennsylvania plant, excluding guards and supervisors as defined in the Act.

ASTRO PRINTING SERVICES, INC.

Donna Nutini, Esq., for the General Counsel.

Robert G. Landes, Esq., of Briarcliff, New York, for the Respondent.

John F. Potts, union representative, of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge. This proceeding was heard by me on July 12, 13, and 14, 1989, on

an original unfair labor practice charge filed on February 15, 1989, and a complaint issued on March 30, 1989, alleging, as amended, that the Respondent independently violated Section 8(a)(1) of the Act by coercively interrogating employees concerning union activity, by soliciting employee complaints under conditions implying that employment terms would be improved, by promising increased wages and other benefits if employees withdrew union support, and by requesting that employees provide the Respondent affidavits given to the National Labor Relations Board. The complaint goes on to define these unfair labor practices as serious and substantial, alleging further that the possibility of erasing their effects and conducting a fair election in the future is so slight that a remedial bargaining order is warranted pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In its duly filed answer, the Respondent denied that any unfair labor practices were committed, contested the appropriateness of the alleged bargaining unit, and asserted that any unlawful conduct which might have occurred would not support a remedial bargaining order. Following close of the hearing, briefs were filed on behalf of the Respondent and the General Counsel.

On the entire record in this proceeding,¹ including my opportunity directly to observe the witnesses while testifying and their demeanor,² and consideration of the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Pennsylvania corporation, operates an offset printing plant in Warminster, Pennsylvania, the sole location involved in this proceeding. In the course of that operation, the Respondent annually sells and ships products valued in excess of \$50,000 to Printing and Publications Corporation, which in turn annually sells and ships products valued in excess of \$50,000 directly outside the Commonwealth of Pennsylvania. The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Graphic Communications International Union, Local 14 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Preliminary Statement

This proceeding is principally concerned with the General Counsel's request that the Respondent be ordered to recognize and bargain with the Union in accord with the *Gissel* doctrine. In support, it is argued that, despite the absence of allegations of discrimination, independent 8(a)(1) violations were sufficiently flagrant to preclude a fair election in the fu-

ture even on application and compliance with conventional Board remedies. See *Gissel*, supra. The Respondent denies that any unfair labor practices occurred, while contending that the Union never had majority support, and that, if proven, any transgressions would not warrant a remedial bargaining order.

B. The Facts

The Respondent is a small print shop engaged in composition, press, and bindery operations. It is operated by two families. Ownership is shared by Alfred Roberts Sr., the president and chief executive officer, and James Cousin, the secretary-treasurer.

There is no history of collective bargaining for its rank-and-file work force, which numbers less than 10 employees.

On November 18, 1988, the Respondent implemented a set of restrictive work rules, subject to enforcement by a progressive system of discipline.³ In addition, in December 1988, it switched health benefit carriers, a step which both increased coinsurance obligations of covered employees, and canceled prescription cards, which imposed a \$3 ceiling on drug costs.

On January 13, 1989,⁴ several employees met with union representatives at the home of Paul Owens, one of the Respondent's pressmen. Thereafter, by January 25, a number of employees had signed authorization cards designating the Union as their collective-bargaining representative.⁵ On January 30, the Union filed a representation petition in Case 4-RC-16963.⁶ By letter of that same date, the Union informed the Respondent, in material part, as follows:

The majority of your production employees have designated the Graphic Communications International Union, Local 14-M, as their representative for purposes of collective bargaining. The GCIU claims the right to represent them. A petition has been filed with the National Labor Relations Board seeking certification as representative of above named employees.

The Union stands ready to meet with you, or your representative, whenever mutually convenient to discuss the matter of recognition. If the company agrees to recognize the Union as representative of its production and maintenance employees and agrees to bargain collectively on the terms of a labor contract, the Union will be pleased to withdraw the NLRB petition.

That same day, this letter, together with a recognition agreement, was hand-delivered to Alfred "Fred" Roberts Sr. by Ed Toff, the Union's vice president. Roberts told Toff that the matter would have to be deferred until he had the opportunity to discuss it with his vacationing partner, James Cousin.

Roberts, however, took two steps in response. He telephoned the firm's accountant and adviser, John Tulio, to re-

¹ Inadvertent errors in the transcript have been noted and corrected.

² The fact that credibility resolutions hereinafter made might be accompanied by objective rationale does not supplant, but is merely intended to reinforce, impressions gained from my firsthand observation of the witnesses. Additionally, testimony not referred to, whether or not contradicted, is rejected to the extent irreconcilable with expressly credited evidence and findings.

³ G.C. Exh. 2.

⁴ Unless otherwise indicated, all dates refer to 1989.

⁵ The cards were single-purpose cards, which on their face included an unambiguous union designation. See G.C. Exh. 100 through 105.

⁶ No election was ever held, as the petition, on April 6, was dismissed administratively on the basis of the pending 8(a)(5) allegation in the instant complaint, which had issued on March 30. G.C. Exh. 3.

port Toth's visit.⁷ Tulio confirms that Roberts was "upset." In addition, Roberts circulated throughout the plant with a copy of the Union's letter, questioning employees as to their involvement.⁸

Roberts admitted that despite a good personal and work relationship with employees in the past, after he was alerted to union activity, his fellowship with employees ended. He relates that organization activity produced an "emotional" strain which prevented his continuing to lunch and otherwise socialize with the workers, as had been his regular practice. Moreover, during the several days after January 30, Roberts gave employees the silent treatment, with all work-related communication handled through Foreman Wyllie.⁹

That same week, on or about February 2, Al Germeroth advised coworkers that his conscience was bothering him. He told them that he intended to talk to Roberts in order to set up a meeting upon Cousin's return from vacation. Later, Germeroth broached this possibility to Roberts, who indicated that he did not know whether this could be done. Later, Germeroth approached Cousin when he returned from his vacation; he apparently agreed to meet with the employees.

The meeting was held during working hours, on Monday, February 6. It was attended by the five employees who had signed authorization cards, plus Wyllie, Cousin, and Roberts. Cousin appears to have opened the session, admittedly stating, "if you have grievances if you would like to recite them, we will be more than happy to listen to them."¹⁰ The employees spoke up, complaining about the absence of pay raises, the decrease in medical benefits, including the loss of their prescription card, and the restrictive rules that had been promulgated in November 1988. Cousin suggested that the employees list their problems in writing. When Roberts, Cousin, and Wyllie left, the employees remained, and Germeroth prepared an outline of their demands.¹¹

⁷The complaint names Tulio as an agent of the Respondent. The work rules promulgated in November 1988 state that they "have been given to Astro Printing by the accountant to help make it a more productive company . . ." G.C. Exh. 2. Roberts claims that this was untrue, and that the rules were devised by Barbara Cousin, without Tulio's involvement. Roberts testified that Tulio permitted them to use this terminology so that the employees would blame him, rather than the owners. Even were Roberts believable, which he isn't, having blamed the accountant, an impression was created among the work force that Tulio was in a position to influence their employment terms, and clothed with apparent authority to act on behalf of the Respondent as to such matters.

⁸Pressmen Paul Owens, Bill Ravert, and Roger Smith testified that on January 30, they were approached by Roberts, who asked each separately, first, if he knew anything about the Union's letter (R. Exh. 2), and, second, if he had attended any union meeting. They responded in the affirmative on both counts. Owens testified that, in his case, Roberts commented, "I should have known as much." Al Germeroth, a cameraman and stripper, testified that he was also approached by Roberts and questioned about his knowledge of the Union's letter, if he was involved, and if he had attended any union meetings.

⁹Based on the credited, uncontradicted testimony of Paul Owen and Bill Ravert.

¹⁰That Cousin was interested in learning of the causes of unionization is evident from the following segment of his testimony:

[T]his is all brand new to us. So, we were trying to prepare ourselves to handle the situation. So that day we went back at lunch time and I . . . asked Al [Germeroth] would you people like to tell us your grievances because we do not know what really created this 100%. We had a slight notion of it, but we did not know . . . 100%.

¹¹Pressman Bill Ravert testified that Cousin at this meeting told the employees, after hearing their complaints, that "the petition has to be pulled with the Union and once that is pulled then . . . maybe we can work something out." Cousin denied making a statement to this effect. I did not believe Ravert's uncorroborated testimony in this respect. He admitted that Cousin's

Germeroth subsequently delivered the list to one of the owners.¹²

A few days later, either Roberts or Cousins approached Germeroth, inquiring, "if one . . . or all of us [employees] would be willing to talk, sit down and talk to John Tulio [Respondent's accountant] about the topics we had brought up because they were not sure whether they were allowed to talk to us or not because . . . of the different papers being shuffled back and forth between the Union . . ." Germeroth reported this offer to his coworkers who apparently agreed to allow him to represent them in meeting with Tulio.

During their first session, Germeroth and Tulio initially reviewed Board publications as to what could lawfully be accomplished between them, with both agreeing that since the owners were not involved there was no problem. They next considered the list of employee demands. (G.C. Exh. 7.) Each item was discussed individually. Having reached an accord, Tulio, who had no authority to effect company policy, cleared the issues with Roberts and Cousin, and after receiving their approval, had the proposal typed before giving Germeroth copies for consideration by the card signers. Through it, employees were offered a 6-percent pay raise effective March 1; annual cost-of-living increases, merit increases pursuant to annual review; reimbursement for coinsurance liability under Blue Cross/Blue Shield; increased vacation, paid holidays and sick leave benefits; and unprecedented paid personal days. See (G.C. Exh. 8).

On Friday, February 10, Germeroth again met with his coworkers, apprising them of the Respondent's proposal. Germeroth wanted immediate approval, pointing out that Tulio would not return to the shop for a month.¹³ However, the employees made additional demands and sought clarification in certain areas (G.C. Exh. 9). Tulio had the additional concessions approved by the owners and incorporated them in a new typed version of the proposed policy.¹⁴ When shown to the employees, they agreed unanimously that if something on this order could be worked out "we would pull the Union petition." Nonetheless, they requested an opportunity to think about it over the weekend. That afternoon Tulio left the facility, thus ending his involvement.

On Monday, February 13, the employees sought additional concessions.¹⁵ Therefore, Germeroth delivered the original proposal with new demands to Roberts, explaining that "we

remark would have been heard by all others in attendance. If made, any suggestion of this sort by Cousin would have been too profound to escape recollection. Despite my disbelief of Ravert, however, I remain convinced that all understood that elimination of the Union was the quid pro quo underlying the Company's new-found interest in upgrading employment standards and its involvement in the emerging deliberations over terms and conditions of employment.

¹²As I understand the testimony of Roger Smith, he appears to relate that he witnessed delivery of the list of demands to Cousin, as the employee meeting was breaking up, and that Cousin said something to the effect of "let us see where we stand with the Union." This aspect of Smith's testimony was uncorroborated and vague, and his recollection seemed too beclouded to warrant credence.

¹³Notwithstanding suggestion in the record that this appeal was made on Monday, Tulio's availability ended on Friday, February 10, and it is more likely that this point was made earlier, on February 10, soon after Tulio delivered the proposed "policy" to Germeroth.

¹⁴G.C. Exh. 5 is representative, with certain exceptions, of what employees were given at that time. Thus, the handwritten notations and signatures were not affixed until Monday, February 13, after Tulio's departure.

¹⁵These were incorporated in Roberts' own handwriting in the version signed later that day by himself and Cousin. G.C. Exh. 5.

would pull the petition . . . if we got something like this”¹⁶ Later that afternoon, the employees again met with Germeroth. The employees were informed by Germeroth that Roberts and Cousin had affixed their signatures to a revised benefit schedule, which included two additional benefits; the first, involving payment of accumulated vacation pay on termination; and, the second, obligating the Company to give 30 days notice before effecting any changes in policy.¹⁷ Germeroth again sought immediate approval. The employees accepted. Germeroth then telephoned the National Labor Relations Board seeking information as to how the authorization cards could be rescinded. He was referred to the Union, which requested a document signed by all seeking to repudiate their cards, with the reasons for their action. (G.C. Exh. 5.) That same day, Germeroth, during working time, on company stationery, and with knowledge of Roberts and Cousin, drafted the following letter, which was sent to the Union, after being signed by all who executed authorization cards:

We, the undersigned employees of Astro Printing Services, Inc. 1020 Thomas Drive Warminster, Pa., request cancellation of the Union Petition filed with the N.L.R.B.

Reasons stated;

Increased Wages

Restored Medical & Hospitalization

Plus other increased Benefits by Company

[s] Christine Metzgar

[s] Albert Germeroth, Jr.

[s] Roger F. Smith

[s] Bill Ravert

[s] Paul J. Owens¹⁸

On February 15, the Union filed the instant unfair labor practice charge.

Thereafter, beginning in early March, the Company’s attorney, Bob Landes, conducted meetings attended by the card

¹⁶In my opinion, this statement was made prior to the Respondent’s final concessions and before execution of the final document later on February 13. The issue is confused by Germeroth’s testimony that he used this language of inducement “after they gave us the final one.” The probabilities reveal that the “final one” was that delivered by Tulio on Friday, February 10, which was yet to be accepted. Thus Germeroth testified that, having received and considered that document, the other employees, on Monday morning, told him that with certain additional changes, “if we could get that . . . we would pull the Union petition.” In terms of timing and context, this counterproposal by employees would have justified an element of salesmanship by the card signers as to what they would do in response to final acceptance. It makes no sense that Germeroth would have delayed this revelation until after the revised offer was signed by the owners later that day. Indeed, from all appearances, the renunciation of the Union was a knee jerk reaction to delivery of the signed document. In any event, whether mentioned or not, the entire record warrants an inference that the Respondent participated in this process for the purpose of convincing employees that there was an alternative to union representation.

¹⁷According to Ravert, employees sought the 30-day notice provision to prevent recurrence of the sudden stroke meted out by the Employer on December 13, 1988, when employees were notified that effective December 15, 1988, their prescription cards would no longer be valid.

¹⁸G.C. Exh. 6.

signers only.¹⁹ At the first,²⁰ on the attorney’s suggestion, Germeroth read the unfair labor practice charges. Paul Owens testified that he asked the attorney whether the Company would implement the benefit policy, with the latter replying: “maybe yes, or maybe no.”

On March 15, the attorney conducted a second meeting.²¹ The pending unfair labor practice case presumably was his central concern. In this respect, employees were advised that they did not have to give affidavits to the Board if they wished not to.²² He then asked if any had done so, stating further, that, if they had, “it would be helpful to the company if someone wanted to give the owners a copy”²³ At this meeting, Landes distributed a memorandum to employees. It was signed by Roberts and Cousin. After acknowledging management’s respect for the right of employees to organize or support the Union, without “improper” persuasion or coercion, the memo went on to address the unfair labor practice allegations as follows:

We also want to emphasize that at no time did we intend to try to improperly influence you to withdraw support from, or for, the union. The Labor Board permits us to state our opinions about why we think you don’t need this union; but since it has claimed that we tried to improperly persuade you not to support it by granting increased wages and other benefits, we state again that we believe that we did nothing of the kind.

We hope that the charge filed by the union will be dismissed by the Labor Board; however, if it is determined that we somehow acted improperly, we apologize. It never was our intent to improperly encourage you to withdraw support for the union, either directly or indirectly, and we want to make it clear that we disavow and repudiate any such misconduct or implications resulting therefrom.²⁴

¹⁹On the same day, but prior to the first meeting, according to the credited, uncontradicted testimony of Bill Ravert he informed Roberts that he had been contacted by an NLRB agent seeking information as to what had transpired. Later, Attorney Landes informed Roberts that he did not have to give a statement to the NLRB if he did not want to, as participation in the investigation was voluntary. In a subsequent telephone call to Landes, Ravert reported to the latter that he intended to provide the Board with a copy of the “proposed company policy”; the attorney reacted by stating that Ravert did not have to do so, and that he could burn the document if he wished.

²⁰Roger Smith had previously terminated and did not attend this meeting.

²¹Germeroth and Smith had terminated earlier and hence did not attend this meeting.

²²Pressman William Ravert raised the possibility that employees could be subpoenaed, but Landes stated the Board does not usually subpoena anyone until after they have given a statement.

²³Pressman William Ravert’s version of what transpired, while acknowledging that employees were told that they were free to give affidavits, does not portray Landes as entirely evenhanded on that score. Thus, according to Ravert, Landes described the unfair labor practice charges as “basically ludicrous,” while going on to state that they would be quickly disposed of because the NLRB would not have “any type of case as long as anybody did not give a statement” Landes allegedly went on to clarify that “if anybody turned over the proposed company policy that thing could drag on for up to three years and in that time, nobody would get a raise or anything.” Although, not free from doubt, here again, I am inclined to discredit Ravert, whose testimony regarding a highly significant matter was left to stand uncorroborated.

²⁴R. Exh. 4. In addition to this document, the Respondent’s attorney apparently drafted another dated April 17, 1989. This was both hand-delivered to employees and posted on a bulletin board adjacent to the timeclock. It summarized the charges and the complaint, stating, in part, “we never intended to violate the Act or your rights thereunder, and we will continue to respect your various rights guaranteed to you under the Act.” Finally, the document appends a replica of a Board notice, over signature of Roberts and Cousin, which includes language approaching that which would be used to remedy the 8(a)(1) allegations in the complaint. R. Exh. 5.

In a further incident, Owens testified that toward the end of the month, he was summoned to meet privately with Landes. He was again asked if he had submitted an affidavit. Owens declined to answer, reminding Landes that he had not answered Owens' question concerning the Company's intention to implement the benefit policy. Landes responded by indicating that he had advised the Company not to honor those promises. Landes also pointed out that the Company would find out if Owens had, in fact filed an affidavit, and if he had done so, to "get a copy and give it to the company." When Owens indicated that he did not think it was fair, Landes said he did not have to cooperate, but that it was strictly voluntary. At that point, Owens left the meeting.²⁵

C. Concluding Findings

1. The prefatory unfair labor practices

The request for a remedial bargaining order in this case is predicated on allegations that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating employees concerning union activity, soliciting grievances, and promising benefits to discourage union activity. It is argued that these illegalities rendered the prospect of holding a fair election in the future unlikely, making authorization cards a more appropriate indicia of employee choice than that which might be registered in a Board-conducted election.

There is no dispute that Alfred Roberts, a co-owner and ranking official of the Respondent, on January 30, reacted to the formal demand for recognition by questioning at least four employees as to their knowledge of and involvement in the union activity. For example, Owens testified without contradiction, that when he affirmatively responded to inquiries about whether he knew anything about the Union's letter and whether he had attended union meetings, Roberts stated, "I should have known as much."

The record is devoid of suggestion that Roberts' foray into the plant to identify the union protagonists was in furtherance of any legitimate objective. It also does not appear that those confronted by Roberts, previously, had manifested their union support in any overt fashion. *Rossmore House*, 269 NLRB 1176 (1984); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

Moreover, on the heels of this incident, Roberts altered his behavior toward employees, from unusually sociable to cold and noncommunicative. The cause of this shift would have been obvious to all. In such a small operation, the resulting discomfort offered a coercive backdrop to the interrogation, which would weigh heavily on both those admitting complicity and any who denied involvement. This conduct on the part of Roberts, though occurring later, was inseparable and cannot be disassociated from his effort to identify those responsible for his anger.²⁶ The questioning of employees under these circumstances violated Section 8(a)(1) of the Act.

The most devastating allegations open with a challenge, under Section 8(a)(1), to the Respondent's effort to ferret out

the causes of unionization. This allegation relates to an apparently unprecedented meeting held on February 6 at the initial suggestion of employee Germeroth. The card signers were the only employees in attendance. Cousin opened the meeting by inviting the employees to explain their grievances, because those within management "do not know what really created this." The employees verbally responded, but at the close of the meeting, Cousin went further, suggesting that the complaints be itemized in writing.

This would become the opening phase of an unlawful attempt to fragment union support among the employees. However, whether viewed independently or in conjunction with the subsequent events, the solicitation of grievances in this instance was unlawful. Its vice was the Respondent's sudden manifestation of interest in employee complaints, leaving employees, whether justified or not, with the impression that management, now, awakened by the threat of unionization, would respond favorably. *Uarco Inc.*, 216 NLRB 1 (1974). Furthermore, Cousin's suggestion, at the meeting's close, that the demands be placed in writing, reinforced the message that the Respondent was interested in more than sterile airing of the issues, and was likely to come forth with concessions sufficient either to moot out, or to lessen, the need for the assistance previously sought from the Union. In this light, the conclusion that promises of benefit were implicit is inescapable. Accordingly, as the Respondent has failed to rebut that inference, it thereby violated Section 8(a)(1) of the Act.²⁷

Indeed, concerning ensuing events, the General Counsel correctly observes that "Shortly thereafter, Respondent made good on its promise to remedy the employees' complaints" John Tulio, an independent accountant, who numbered Respondent among his clients, anchored this effort. The Respondent denies that the actions of John Tulio were binding on it, claiming that he was not authorized to engage in the deliberations which produced the "proposed company policy" and the repudiation of union authorization cards. This contention borders on frivolity.

Tulio was among the first, if not the first, that Roberts chose to contact on January 30 on learning of organization activity. On Thursday, February 9, Tulio made his monthly visit to the plant to review the books. At that time, Roberts gave Tulio the list of employee demands (G.C. Exh. 7), re-

²⁵ Ravert testified that on June 15, after his employment terminated, Cousin telephoned him inquiring whether he had given any statements to the Union. Ravert indicated that he had given a statement to the NLRB. Cousin asked if it would be possible for Ravert to get him a copy. Ravert advised that he would do what he could.

²⁶ Cf. *Repco Distributing*, 273 NLRB 158 fn. 2 (1984).

²⁷ See, e.g., *Blue Grass Industries*, 287 NLRB 274 (1987). The Respondent somewhat incredulously argues no violation might be found because the Respondent repeatedly disclaimed the ability to "make any promises regarding resolution of their problems." This attempt to give lip service to statutory prescriptions was belied by the Respondent's entire course of conduct. Equally without merit is the Respondent's argument that because the meeting was requested by an employee, it was free, with impunity, to seize upon the opportunity as the opening step in a process of direct dealing with employees, which ultimately led to comprehensive promises of benefit. This is so even if one were to discount that Germeroth did so in the context of Roberts' "cold shoulder" toward those who ultimately would attend. Moreover, there is no merit in the Respondent's claim that the notices posted on or about April 17 effectively dissipated the effects of all or part of the alleged illegalities in this proceeding. Cf. *Agri-International*, 271 NLRB 925 (1984). This flirtation with legal maneuvering would be taken by employees as just about as genuine as the denials that the Respondent supported, condoned, and approved Tulio's efforts to convince employees that their complaints could be resolved without intervention of the Union. Moreover, these postings could do nothing to unravel the illegal effects of the promises of benefit. The so called "proposed policy" once cemented on March 13 by the signatures of the principals, effectively and unmistakably conveyed that the Respondent stood ready, willing, and able to implement this comprehensive benefit package once the Union was eliminated. Neither the Respondent, or the Board, for that matter, was in a position to disabuse employees of that notion.

questing that Tulio “look this over.” Roberts also provided him with a copy of the Board’s standard election notice (R. Exh. 3). Tulio told Roberts “let me sit down with somebody and just review this” Roberts assertedly replied, “If you want to have a conference you can but we cannot speak to them.” Tulio requested that Roberts and Cousin call Germeroth to the conference room.²⁸ According to Tulio, he then informed Germeroth as follows:

[Al] . . . I have before me this list of items you must have drafted but as a group you must have decided . . . you want to go over and this is what you wanted. . . . I asked Fred if he would mind if I would speak with you or speak to any of the employees, or all of the employees about it.²⁹

The officers are not allowed to speak with you; the officers are not allowed in this conference room as you can see and they will not come in here.³⁰ So . . . [Germeroth] said, well, what would you like to know and I said, let us sit down and go over it, point by point.

Soon after meeting with Germeroth, Tulio met with Roberts and Cousin, inquiring as to how they felt about the terms achieved in this meeting; they assented to all items. The listing of new benefits was then typed and given to Germeroth, who delivered copies to the employees.

On Friday, February 10, Tulio had his final meetings with Germeroth. At that time, Germeroth presented additional proposals on behalf of the employees. Tulio obtained the approval of Roberts and Cousin to these additional terms, then had the document retyped incorporating these additions, and returned it to Germeroth. Later, Germeroth reported to Tulio that the employees wished to consider the issues over the weekend. Tulio then left, and did not again return to the plant until late February (G.C. Exh. 8).

Tulio admits that he served as an intermediary between the parties, with no expertise to offer other than his skills as a communicator. He made no financial calculations or cost analysis with respect to the new concessions at any time during these deliberations. He volunteered to serve after being informed that there was a communication problem, which the owners, themselves, could not lawfully correct. He met with Germeroth, with their consent, and he acted in their behalf

²⁸ Germeroth confirms that either Roberts or Cousin approached him inquiring “if one of us or all of us would be willing to talk, sit down and talk to John Tulio about the topics that we brought up because they were not sure whether they were allowed to talk to us or not, because of . . . the different papers being shuffled back and forth between the Union”

²⁹ Tulio states that he assumed that employees already enjoyed these benefits. I find it impossible to believe that he would have interpreted this document, whose source was known, as simply intended by the drafters to mirror existing terms. Considering the nature of this document, together with Tulio’s knowledge that it was generated by employees on the heels of their union activity, any assumption that no significant changes were involved is incredulous. This is even more so in the case of an accountant, who would have been sufficiently familiar with labor cost items to be aware that benefits were not at this level. It is not without significance that Tulio’s own testimony reveals that the switch in health benefit carriers was made in November 1988, after he reviewed “all” of the firms expenses “to make recommendation on how we could cut some of the costs”

³⁰ Tulio avers that he reviewed the Board’s formal election notice at this time with Germeroth, including the admonition against “Promising or granting promotions, pay raises, or other benefits, to influence an employee’s vote by a party capable of carrying out such promises.” (R. Exh. 3.)

in negotiating a revised, upgraded schedule of benefits, seeking and obtaining their approval at every step along the way. Simply put, he knowingly had become the Respondent’s instrumentality for neutralizing the very causes of organization activity. He clearly was an agent, whose actions were authorized, ratified, and binding on the Respondent within the meaning of Section 2(2) of the Act.

In any event, Tulio’s departure did not place a cap on the Respondent’s proposal. On Monday, February 13, according to Germeroth, employees requested two additional guarantees. Roberts acceded to them, and that same day they received a final version, which had been signed by both owners (G.C. Exh. 5). Neither Roberts nor Cousin were examined as to their execution of this document. They did not testify regarding their dealings with Tulio in the course of this process. Germeroth was the sole witness as to what transpired after Tulio’s departure from the negotiations on Friday, February 10. There was no denial of his testimony that, during these deliberations, “after we had . . . something written,” Germeroth informed the owners that the employees would be willing to “pull” the petition.

Based on the entire record, it is evident and I find that Roberts and Cousin, first, personally involved themselves in an effort to identify the demands of the employees, then authorized and approved John Tulio’s participation in negotiations leading to an accommodation of those demands, and as a final stroke personally executed a document signifying their intention to be bound to the itemized benefit changes set forth in the final version of the “proposed company policy.” The timing and nature of this course of events is explainable solely in terms of the Respondent’s desire to thwart the incipient union campaign, through an ostensibly firm guarantee that employees could achieve their economic goals without intervention of a union. It was a pattern of conduct which violated Section 8(a)(1) of the Act whether viewed severally or in tandem.

Finally, the General Counsel contends that the Respondent violated Section 8(a)(1) by attempts on the part of its attorney and Cousin, variously to ascertain whether employees had been contacted by Board investigators or had provided affidavits to the latter, while asking employees for copies of any such affidavits. The General Counsel argues that these inquiries constituted per se violations unaffected by the privileged status that might be conferred upon interviews for the purpose of preparing a defense to unfair labor practice charges. See, e.g., *Frascona Buick*, 266 NLRB 636, 647–648 (1983). With respect to such interviews, the Board has adopted stringent safeguards which must be invoked by employers to preserve legitimacy of interrogation that might otherwise coercively impinge on Board processes. Thus, in *Johnnie’s Poultry Co.*, 146 NLRB 770, 775 (1964), the Board, while recognizing the “inherent danger” of coercive interrogation, elected to privilege interviews addressing such matters if all of the following criteria are satisfied:

[T]he employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation [in the interview] on a voluntary basis; the questioning must occur in a context free from hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legiti-

mate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. [146 NLRB at 775.]

Under established policy, these safeguards are the outer limit for permissible inquiry into employee involvement in the processing of unfair labor practice charges. *Bill Scott Oldsmobile*, 282 NLRB 1073, 1075 (1987). Here, employees were questioned in this area by the Respondent's attorney and one of its owners without affording the specified assurances.³¹ In the circumstances, they acted under conditions violative of Section 8(a)(1) of the Act. *Ingram Farms*, 258 NLRB 1051, 1055 (1981).

THE REMEDY

Conventional Terms

Having found that the Respondent has engaged in unfair labor practices, it shall be recommended that it be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the purposes and policies of the Act.

The Appropriateness of a Bargaining Order

The Demand and Refusal

There is no dispute and I find that on January 30, an unmistakable demand for recognition and bargaining was submitted by the Union to the Respondent both in person and by mail. Rejection took the form of the Respondent's unlawful conduct calculated to undermine the Union's representative status.

The Appropriate Unit

The scope of the appropriate collective-bargaining unit under Section 9(a) of the Act is not in issue. It consists of the following:

All production and maintenance employees employed at the Warminster, Pennsylvania plant, excluding guards and supervisors as defined in the Act.

There is a single placement issue.³² Thus, the Employer would include, and the General Counsel exclude, Jean Cave. The General Counsel contests her eligibility either as an office clerical, lacking in community of interest with other unit employees, or as a confidential employee. The Respondent disagrees on the basis of her frequent work contacts with the employees sought.

³¹The General Counsel correctly points out that Ravert's having left the Respondent's employ when contacted by Cousin, furnishes no defense. The policy involved here is designed to protect the effectiveness of Board processes. *NLRB v. J. Coty Messenger Service*, 763 F.2d 92 (2d Cir. 1985). Thus, the safeguards against coercion do not lose meaning solely because the cooperation of a former employee is at stake.

³²The General Counsel initially denied that Foreman Donald Wyllie possessed indicia of supervisory authority, and hence would have included him in the appropriate unit. Toward the end of his testimony the General Counsel, for purposes of this case, and without prejudice to the right to litigate his status in some further proceeding, acceded to his exclusion. At all times, before and after this concession, the Respondent has maintained that Wyllie should be excluded as a statutory supervisor.

Cave, at times material, was the sole employee primarily responsible for secretarial functions. She served as a receptionist, answered telephones and typed correspondence. She worked different hours from production employees and her workstation was physically segregated from the plant by an interior wall, with her desk located adjacent to the offices of Roberts and Cousin.

Like production workers, however, she was hourly rated and punched a timeclock. She lunched with composing room and bindery employees (Linda Friel, Julie Vellecco, and Chris Metzgar). Her duties entailed regular contact with production workers, as she delivered job orders for production, monitored jobs as they passed through the shop, discussed composition requirements with composing room employees, and checked the adequacy of stock inventories. On occasion, if her work was slow, Cave would help in the bindery, as needed. Roberts estimated that Cave would spend 40 to 50 percent of her time away from her desk in the production area. If Cave, or her replacement, were excluded, she would be the sole remaining rank-and-file employee, and as such would lack opportunity for organization and union representation.

Although Cave has left the Respondent's employ and her eligibility will not affect the outcome of any issue in this proceeding, I am persuaded that Cave was a dual-function employee, whose contacts with unit personnel were sufficient to establish a community of interest adequate to warrant her inclusion. This result is not altered by the General Counsel's further claim that she held confidential status. Affirmative evidence does not demonstrate that she had access, or was privy to, management policy affecting labor relations, or that she served in a "confidential capacity." Contrary to the General Counsel, this proof failure is not overcome by the fact that Cave was the only person in the plant who possessed secretarial skills.³³

The Union's Majority

Based on my finding as to the eligibility of Jean Cave, and agreement of the parties, I find that, on and before January 30, 1989, the appropriate collective-bargaining unit included the following employees:

Bill Ravert	Christine Metzgar
Al Germeroth	Julie Vellecco
Paul Owens	Linda Friel
Roger Smith	Jean Cave

³³In *Reynold Baking Co.*, 249 NLRB 1100 (1980), the evidence demonstrated that the employee had access to labor relations data prior to its transmittal to the union. Consistent therewith, in *Intermountain Electric Assn.*, 253 NLRB 1153 (1981), aff'd. 732 F.2d 754 (10th Cir. 1988), the Court specifically approved the Board's definition of the burden imposed on the party seeking exclusion on this ground:

[I]t is insufficient that an employee may on occasion have access to certain labor related or personnel type information. What is contemplated instead is that a confidential employee is involved in close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it. [Emphasis added.]

The evidence in this case neither demonstrates directly, nor warrants an inference that Cave met the second tier of this two-part standard. Here, the fact that Cave *retyped* the drafts of the "proposed company policy" does not support a fairly based conclusion that she had access to any information which was of a confidential nature.

Of this group, Ravert, Germeroth, Owens, Smith, and Metzgar, executed, unambiguous, single purpose union authorization cards. (G.C. Exh. 100–104.) Each of the designations, in material part, stated: “I the undersigned employee . . . do hereby appoint the Graphic Communications International Union . . . my true and lawful agent, for me, and in my place and stead, to bargain collectively . . .” Cf. *Nissan Research & Development*, 296 NLRB 598 (1989).

Metzgar is the focal point of the Respondent’s challenge to the Union’s majority. Based essentially on her testimony, it is argued that, despite the clear designation on the face of the card, Metzgar was improperly induced into signing on the basis of a conditional waiver of union initiation fees, as condemned by *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973), and its progeny,³⁴ as well as a representation concerning an election transcending that deemed permissible in *Cumberland Shoe Corp.*, 144 NLRB 1268 (1963).

She avers that on the day after the initial union meeting, which was held on January 13, Paul Owens gave her a packet of union materials, which included a blank authorization card. He allegedly told her that they needed her vote so that they would have the “101%” needed for the Union to waive its initiation fee.

In addition, Metzgar testified that on the day she signed her card, upon her inquiry, Owens stated that everyone else had signed. She also asserts that she asked whether the card was final, with Owens responding “no, that we still had a vote.” She could not recall whether Owens stated that this was the only purpose for which the card would be used.³⁵

She signed her card on January 25, and subsequently attended the union meeting held on January 28. At that time, she admits that Union Representative Potts stated that no one in the unit would be charged initiation fees and that the cards would be used to support a request for recognition. She further concedes that she was afforded full opportunity to ask questions, which she did. Finally, she acknowledges that when the cards were turned in Potts inquired if everyone understood the cards. It does not appear that she wavered on the union issue at that juncture.

Owens denied that he made the representation concerning initiation fees to Metzgar. He avers that he told Metzgar that the purpose of the card was to secure union representation, that a vote of 51 percent in an election would be required

to obtain representation, and that, irrespective of the outcome, there would be no obligation for anyone to pay an initiation fee. I credit Owens. Metzgar was a thoroughly unpersuasive witness, who seemed thoroughly bewildered by the expectation that, in her role as a witness, her comprehension of, and ability to recall specifics were essential. Doubts as to her capacity for recall and ability to grasp events obviated confidence that she could provide a reliable accounting of precisely what she was told.³⁶

Concern also exists as to whether Metzgar might have seized upon alleged trickery in obtaining her card as a false apologia for her break with personal and family attitudes concerning unions. She described her dilemma as follows:

[I] never liked unions. My family was in their own business and . . . they were against unions. I was having numerous amounts of arguments over it. He [her husband] wanted me to get another job when all this was started. The reason I didn’t go to the first meeting was because of my husband telling me I couldn’t go. Paul [Owens] did know that, and he knew I was against the union. In fact, I even mentioned in the second meeting that I did end up going to . . . that I was very wishy washy with it, and I didn’t like it. I didn’t want to be involved but I felt that I had to be involved because of the position of the company that I was working [for]. I basically like the company. I like who I am working for; I like the employees.³⁷

Just what was the “position of the company” that placed her in this position? Prior to advent of the Union, she was disenchanted with the Respondent on at least two counts. Thus, she admittedly was upset because the Respondent both had deferred her vacation and denied her a job transfer. Against this background, she signed a card and willingly attended the second union meeting, showing no signs of disenchantment. In this light, there is every probability that Metzgar executed her authorization card, in the face of familial pressure that she refrain from doing so, because of an overriding sense of need for union representation.

For the above reasons, and as Metzgar’s uncorroborated testimony is rejected to the extent that she would have me believe that she was prompted to execute a card for reasons other than expressed on the face of that document, it is concluded that, as of January 25, five employees in a unit consisting of eight, a majority, had effectively designated the Union as their collective-bargaining representative.

³⁶ An attempt to offset my adverse impression was made the subject of a somewhat unusual request by the Respondent’s attorney. Thus, after Metzgar testified once, she was recalled to the stand again the next day to describe the following disability:

I have dyslexia, and I have trouble speaking. I think it in my head, but I can’t really say exactly what I am saying. I have to have time to really think it out clearly. As soon as I get nervous, or when questions come at me, I have to have time . . . to think about them so I can say them properly.

The Respondent now asks, on this basis, with no medical confirmation, that I disregard her “frequent unresponsiveness and inordinate delay in answering certain . . . questions.” However, my disbelief of Metzgar stands upon broader considerations than excusable under the disability she describes.

³⁷ I have reconsidered my expression at the hearing of a disinterest in the witness’ personal philosophy.

³⁴ The Respondent also cites testimony by Germeroth as aiding its challenge to the Union’s majority. Thus, Germeroth states that at the first union meeting on January 13, he was given to understand that the initiation fee would be waived “if everybody signing the authorization cards when it came time for a vote went 100% then it would be waived.” Germeroth couched this solely in terms of his “understanding” and made no attempt to trace its origin to any remarks by a union supporter or official. Moreover, his “understanding” is plainly at odds with the stipulated transcript of Union Representative John Potts’ remarks at the January 13 meeting. See Jt. Exh. 1. No weight is given to Germeroth’s testimony.

³⁵ Had I regarded Metzgar as a credible witness, her testimony in this respect would lack the elements required for invalidation under *Cumberland Shoe*, supra. Thus, in every organization campaign, if the employer abstains from unlawful conduct, the bargaining relationship can be established only through voluntary recognition or an election. In most instances, the employer will prefer an election, which the union can achieve only upon a substantial showing of interest established by signed authorization cards. Thus, an election will always be an underlying purpose of cards, and the fact that signers are so informed offers no independent basis for invalidating the card. See, e.g., *NLRB v. Gissel Packing Co.*, 395 U.S. at 606–607; *Levi Strauss & Co.*, 172 NLRB 732, 733 (1968); *J.P. Stevens & Co.*, 244 NLRB 407, 438 [Ronnie Burney] (1979), enf. 668 F.2d 767 (4th Cir. 1982).

The Refusal to Bargain

The General Counsel seeks a *Gissel II* remedial bargaining order pursuant to allegation that the unfair labor practices “are so serious and substantial in character that the possibility of erasing the effects . . . and of conducting a fair election by the use of traditional remedies is slight, and the employees’ sentiments regarding representation, having been expressed through authorization cards, would, on balance, be protected better by issuance of a bargaining order” *NLRB v. Gissel Packing Co.*, 395 U.S. at 614.

In this case, the illegal activity was waged at the highest levels of management. It was directed essentially at the card signing majority, but advantaged each and every employee in the small bargaining unit. Through it employees were given to understand that Roberts and Cousin, the corporate owners themselves, had abandoned their negative approach to employment terms, and now stood ready to resolve employee demands without intervention of a union. See *Long-Airdox Co.*, 277 NLRB 1157, 1160 (1985). Following negotiations with employees, Roberts and Cousin ultimately executed a document which embodied a comprehensive definition of new benefits. From beginning to end, this unlawful pattern of conduct evolved from a single event; i.e. the threat of union organization. Through it, all incentive for further employee support of the Union was nullified. Consistent therewith, the card signers, in their February 13 joint statement, grounded their desire to cancel the election petition solely upon the Respondent’s offering of the new benefits.³⁸

The nexus between loss of majority and unlawful conduct having been established, the question becomes whether Board remedies are competent to clear the air and pave the way for a free and fair election. In this connection, unlawful promises to upgrade existing benefits will always prove to be the cheapest and most effective means of damage control by employers who face union organization. Few who could get what they want without representation would expend energy and resources in quest of organization.

Thus, the “give ‘em what they want” approach is a form of contumacy which furnishes a predictably effective means of combatting unionism. It is a risk free, long term solution which lacks the costly, overhead potential of discriminatory terminations. And in terms of redress, the comprehensive promise of benefits is less susceptible to correction.³⁹

In fact, it is fair to state that conventional Board remedies are overmatched by this form of industrial bribery. Faced with such a violation, the Board, for good reason, does not insist that the promise be rescinded or that the benefits not be granted. Instead, the employer is simply enjoined from re-

³⁸ It is not entirely clear whether Roberts and Cousin by affixing their signatures to the proposed company policy created a legal obligation to actually implement the new benefit structure. Assuming, without deciding that it did not, they, at a minimum, whether intended or not, implicitly held out the promise that all would be enjoyed upon demise of the Union.

³⁹ I am aware of the Board’s expression in *Groves Truck & Trailer*, 281 NLRB 1194, 1196 (1986), that discrimination “is among the most flagrant and severe acts an employer can take to dissuade employees from selecting a bargaining representative.” Moreover, as an abstraction, disparate action is far more offensive to affected employees than promises of benefit. Yet, the effect of the former on the prospects for a fair election in the future is more ambiguous. For, in cases of discrimination, traditional remedies, in the form of reinstatement and backpay, at least attempt to restore the status quo. Indeed, unlawful discharges might backfire, creating a sense of unification among employees, with the union at its backbone.

peating this form of coercive conduct in the future. Thus, the impact of the illegal conduct upon employee choice is not addressed. *Color Tech*, 286 NLRB 476, 477 (1987). In other words, the arsenal of available remedies merely offers a “slap on the wrists” which will not erase the effects of this method of conditioning employees against unionization. Should there be an election, employees still will equate a “yes” vote with a rejection of the employer’s comprehensive offering of upgraded benefits. See, e.g., *Pembrook Management*, 296 NLRB 1226, 1227–1228 (1989).

For the above reasons, it is concluded that traditional Board remedies are unlikely to remove the imbalance created by the Respondent’s unprecedented and willful identification of demands, its knowing participation in an effort to accommodate those demands, and its formal adoption, in writing, of an agreement or promise that substantial new benefits will be conferred.⁴⁰ An equalizer, in the form of a bargaining order, is essential to overcome the effects of this reflexive blow to organization under a remedial policy which is too narrow to provide an election atmosphere “likely to demonstrate the employees’ true undistorted desires.” *Gissel Packing Co.*, 395 U.S. at 611. Hence, it is concluded that in this case the “employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order . . . [than a future election]. *Id.* at 614–615.⁴¹ I therefore find that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing, since January 30, 1989, to recognize and bargain collectively with the Union as the exclusive representative of employees in the unit deemed appropriate.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

⁴⁰ The Respondent contends that its informal posting of notices had a mitigating affect on the propriety of a bargaining order. I disagree. Assuming that the postings involved here replicated what the Board traditionally requires, this self-serving gesture, in terms of the *Gissel II* inquiry, is a mere redundancy. As the Respondent was apprised at the hearing, if a posting pursuant to Board order would prove an ineffectual foundation for a fair election, a voluntary posting, would hardly fill the void. This is particularly so in the case of an employer that tells employees one thing and does another. In short, the line of cases headed by *Passavant Memorial Hospital*, 237 NLRB 138 (1978), are inapposite to the issue of whether the special relief available under *Gissel* is warranted.

⁴¹ The fact that card signers Germeroth, Ravert, and Smith no longer are employed by the Respondent does not alter the result. See, e.g., *Avecor, Inc.*, 296 NLRB 727, 749 fn. 28 (1989). In this regard, the *Gissel* question presents a remedial issue which requires all ambiguities to be resolved against the wrongdoer. Consistent with that principle, it is fair to assume that employees subsequently hired would be presumed to support the union to the same extent as their predecessors. Moreover, it is entirely possible that the turnover itself was a byproduct of the unlawful conduct and, hence, if entertained as a defense, would permit the employer to profit from its wrongdoing. See, e.g., *F & R Meat Co.*, 296 NLRB 759 (1989). Furthermore, the Respondent’s reliance on *Walter Garson, Jr. & Associates*, 276 NLRB 1226 (1985), a decision by Chairman Dotson and Member Johansen, with Member Dennis dissenting, is unpersuasive. Unlike that case, here the unlawful conduct was in furtherance of a scheme to induce employees to repudiate the Union. It had that effect, with the cause of the Union’s loss of majority not subject to redress under conditions offering any reasonable assurance that a free and fair election could be conducted in the future. Finally, it would be totally inappropriate to apply the result in *Mariposa Press*, 273 NLRB 528, 530 (1984) to the instant case. For, as specifically concluded there, “this [is not] the type of case marked by substantial employer misconduct which has a ‘tendency to undermine [the Union’s] majority strength and impede the election processes.’”

3. The Respondent independently violated Section 8(a)(1) of the Act by coercively interrogating employees concerning union activity, by soliciting employee grievances under conditions implying that they will be resolved favorably, by promising benefits to dissuade employees from supporting the Union, and by, under coercive conditions, requesting that employees turn over prehearing affidavits they had submitted to NLRB agents.

4. Since January 30, 1989, the Union has been the exclusive agent, representing a majority, within the meaning of Section 9(a) of the Act, in the appropriate unit, as follows:

All production and maintenance employees employed at the Warminster, Pennsylvania plant, excluding guards and supervisors as defined in the Act.

5. By virtue of the unfair labor practices described in paragraph 3, above, the Respondent has undermined the Union's majority and has precluded any likelihood that a fair election could be held in the future.

6. Since January 30, 1989, the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union in the above-defined collective-bargaining unit.

7. The unfair labor practices found above constitute unfair labor practices having an effect upon commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴²

ORDER

The Respondent, Astro Printing Services, Inc., Warminster, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about union support or union activities.

(b) Soliciting employee grievances under conditions implying that they will be resolved favorably.

(c) Promising benefits to employees to dissuade them from supporting the Union.

⁴²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Requesting that employees turn over affidavits submitted previously to agents of the National Labor Relations Board.

(e) Refusing to recognize Graphic Communications International Union, Local 14, as the exclusive collective-bargaining representative of its employees in the appropriate unit defined below:

All production and maintenance employees employed at the Warminster, Pennsylvania plant, excluding guards and supervisors as defined in the Act.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed at the Warminster, Pennsylvania plant, excluding guards and supervisors as defined in the Act.

(b) Post at its facility in Warminster, Pennsylvania, copies of the attached notice marked "Appendix."⁴³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."